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Charter of Human Rights Training

Operations Response Unit | Victoria Police



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Acknowledgement of Country

I acknowledge the Traditional Owners of the land on which we are meeting. I pay my respects to their Elders, past and present, and the Elders from other communities who may be here today.



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Session structure

- Survey of Charter knowledge
- History and overview of the Charter of Human Rights
- The protected rights
- Your obligations under the Charter
- Proportionality and scenarios
- Wrap up



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Lesson Outcomes

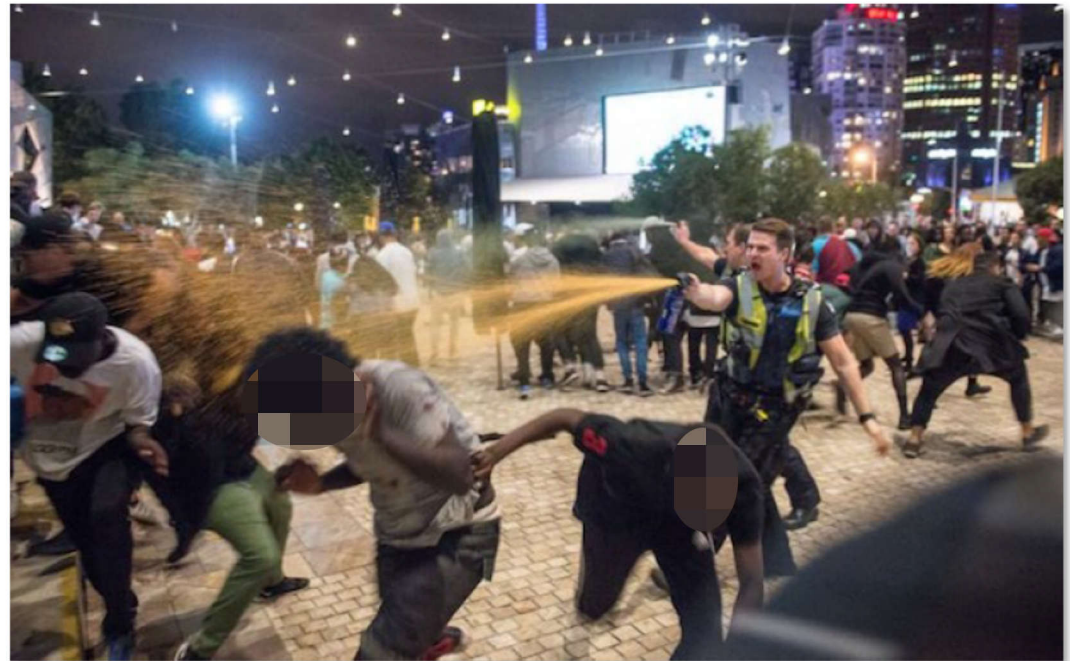
- That you understand your two obligations under the Charter of Human Rights (properly consider and act compatibly with human rights)
- That you understand the 20 rights that are protected under the Charter
- That you understand how the Charter relates to your work



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Group Discussion

- What are human rights
- Why are human rights important for public order policing?





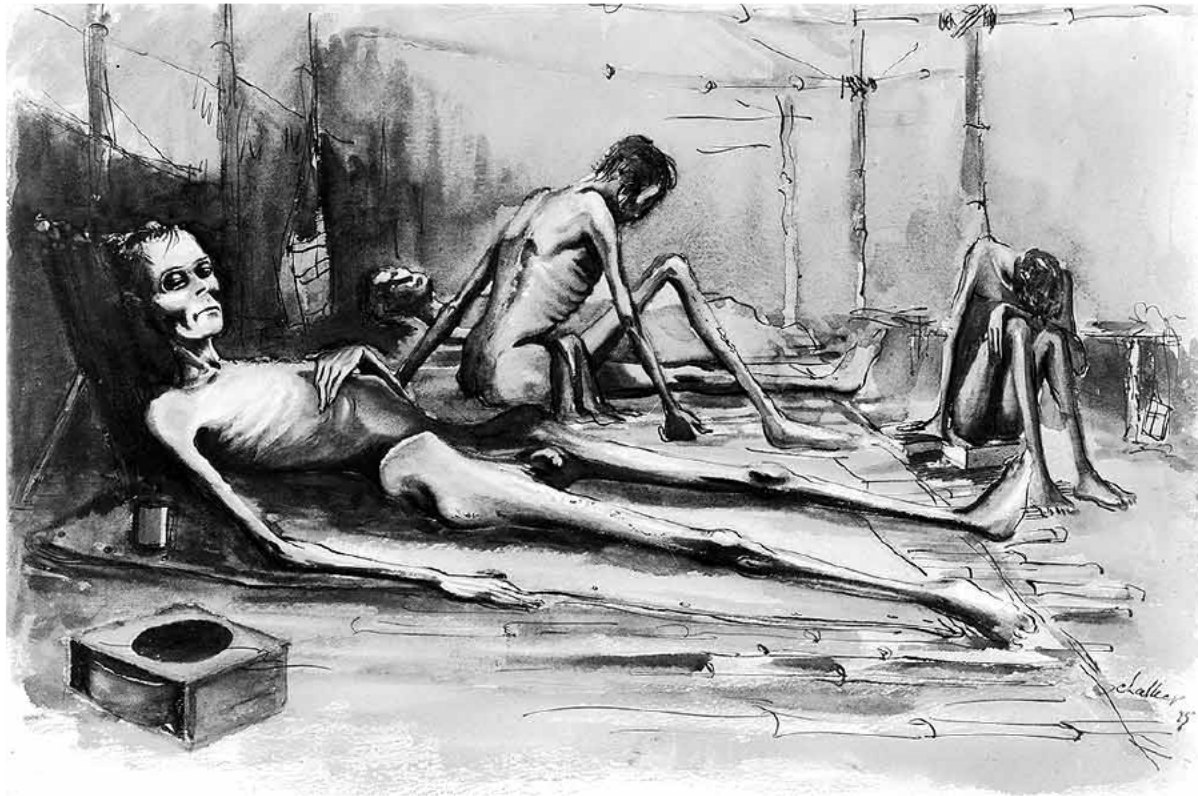
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Part One: Overview of the Charter and Human Rights



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The Origins of Human Rights



Human Rights – in response to the atrocities in World War II

Image: Painting by Jack Chalker – Thai-Burma railway Australian soldiers die from disease and starvation



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International Human Rights Law

Universal Declaration on Human Rights (1948)

International Covenant
on Civil & Political Rights (1966)

International Covenant
on Economic, Social
& Cultural Rights (1966)

Race (1969)

**Women
(1981)**

**Torture
(1987)**

**Children
(1990)**

**Indigenous
Peoples
(2007)**

**Disability
(2008)**

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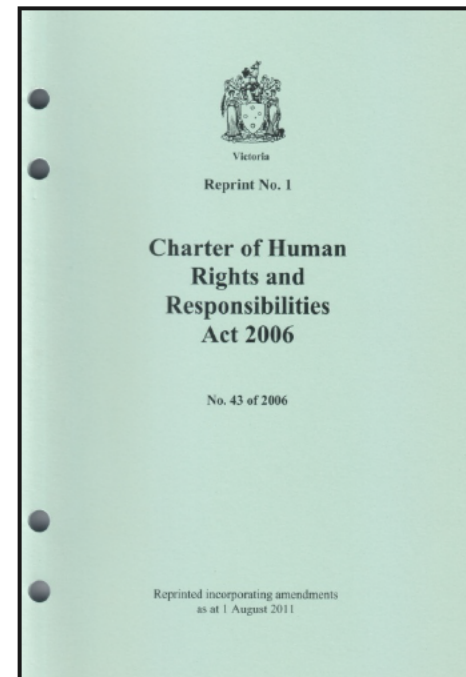
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The Charter



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- The *Charter of Human Rights and Responsibilities Act 2006* is a **Victorian Law**
- Its contents are taken from the ICCPR
- It sets out the **human rights** of all people in Victoria
- It sets out who has **responsibilities (obligations)** and what those responsibilities are





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Who has rights under the Charter?

- Every person in Victoria has human rights
- Charter obligations protect people in their interaction with government





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Part Two: The Protected Rights



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The Human Rights in the Charter

- s 8** Right to recognition and equality before the law
- s 9** Right to life
- s 10** Right to protection from torture and cruel, inhuman or degrading treatment
- s 11** Right to freedom from forced work
- s 12** Right to freedom of movement
- s 13** Right to privacy and reputation
- s 14** Right to freedom of thought, conscience, religion and belief
- s 15** Right to freedom of expression
- s 16** Right to peaceful assembly and freedom of association
- s 17** Right to protection of families and children

- s 18** Right to take part in public life
- s 19** Right to protection of cultural rights
- s 20** Property rights
- s 21** Right to liberty and security of person
- s 22** Right to humane treatment when deprived of liberty
- s 23** Rights of children in the criminal process
- s 24** Right to a fair hearing
- s 25** Rights in criminal proceedings
- s 26** Right not to be tried or punished more than once
- s 27** Right to protection from retrospective criminal laws

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Rights spotting scenario

There is two groups of people gathering at Federation Square – one is supporting the right of a controversial American speaker to deliver a lecture in the theatre, and the other is protesting the speaker calling him a bigot and a fascist.

Victoria Police are required to keep both groups separated, and to ensure that the public as a whole are safe and no property is damaged by either group.



*What rights are relevant here
(and whose rights are they?)*



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Part Three: Our Obligations under the Charter



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Our two obligations – s. 38

We must



Properly consider
human rights

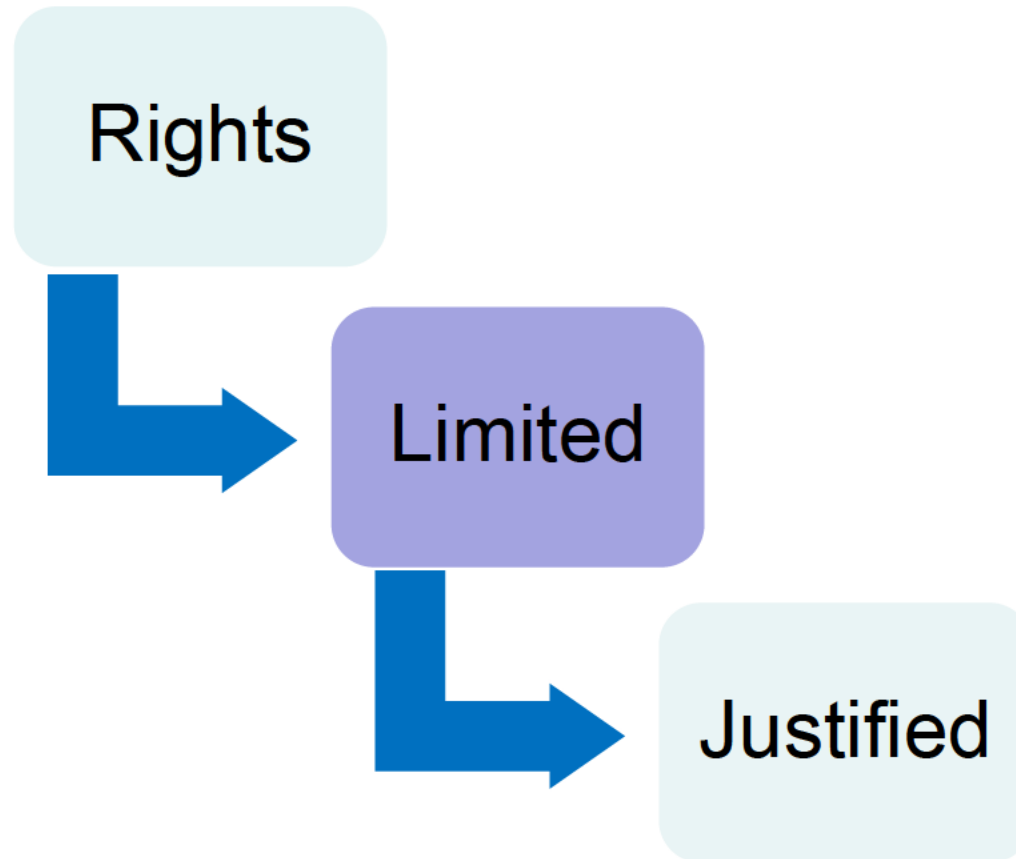


Act compatibly
with human rights
when making a
decision



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Applying the Charter





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Freedom of Peaceful Assembly

Freedom of peaceful assembly is a fundamental right, and should be enjoyed without restriction to the greatest extent possible

Only those restrictions which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others, and are **lawful**, **necessary** and **proportionate** to the aim pursued, may be applied.

Implementation Checklist – UN Special Rapporteurs Management of Assemblies

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Freedom of Peaceful Assembly (cont)



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- Even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain all the other rights, subject to the normal limitations. **No assembly should thus be considered unprotected**
- Equipment for police deployed during assemblies should include both appropriate personal protective equipment and appropriate less-lethal weapons. Use of force must comply with the principles of necessity and proportionality
- Firearms may be used only against an imminent threat either to protect life or prevent life-threatening injuries and there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life.
- Firearms should never be used simply to disperse an assembly, indiscriminate firing into a crowd is always unlawful. Intentional use of lethal force is only lawful where it is strictly unavoidable to protect another life from an imminent threat

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The Legal Framework (cont) Crimes Act and proportionality



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CRIMES ACT 1958 - SECT 462A

Use of force to prevent the commission of an indictable offence

A person may use such force *not disproportionate* to the objective as he believes on *reasonable grounds* to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence
(emphasis added)

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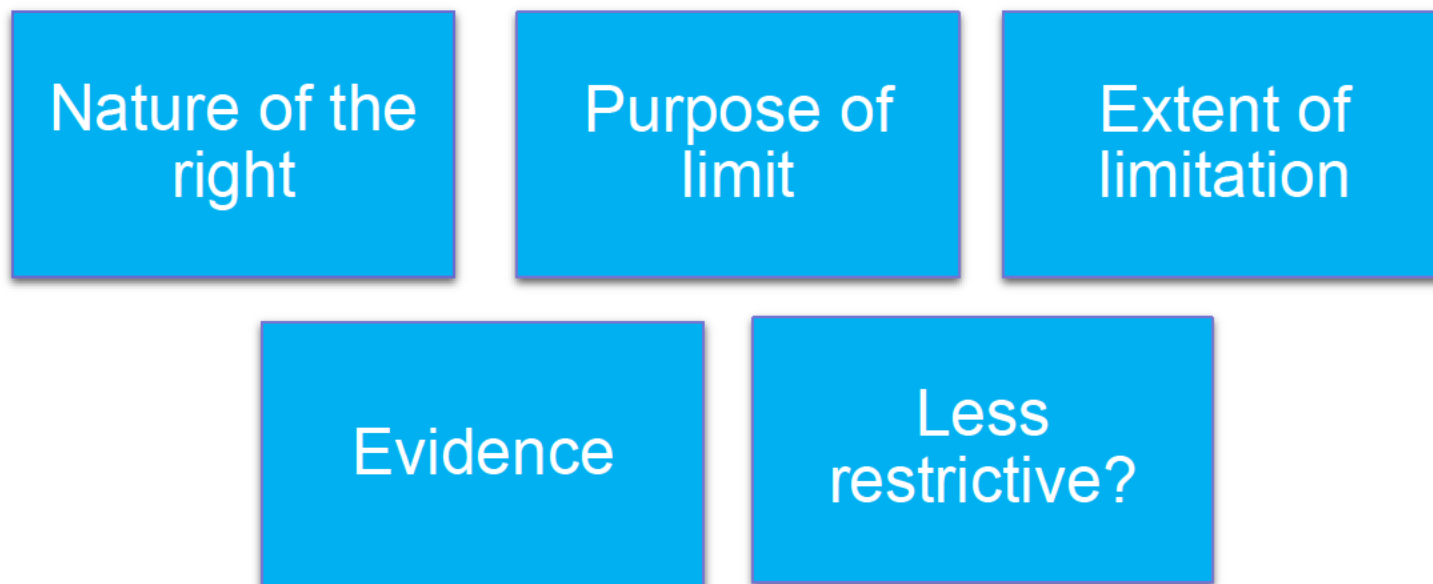
How can you avoid using 'disproportionate force'



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When considering using LTLF – remember proportionality under the Charter (section 7(2) Charter)

Five steps in Proportionality:



What does Proportionality under the Charter mean?



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- Nature of the right – what does the human right protect
- Purpose of the limitation – what are you trying to achieve
- Extent of the limitation – how will your action impact on the person's human rights
- Relationship between limitation and purpose – will your actions achieve your objective (evidence base)
- Less restrictive options – can you do anything that will achieve your objective without impacting on the person's human rights?



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What does Proportionality under the Charter mean?

- **Nature of the right**
- Purpose of the limitation
- Extent of the limitation
- Relationship between limitation and purpose
- Less restrictive options

Nature of the
right

Purpose of
limit

Extent of
limitation

Relationship/
Evidence

Less
restrictive?



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Nature of the Right – Scenario

You respond to a residential property where there is a gathering of 20 young people
Neighbours have complained of excessive noise and property damage
You begin instructing young people to leave the property, which they begin doing

Is using a less than lethal weapon proportionate and appropriate to disperse the crowd at this stage? Why/Why not?

Entering the back yard you find three people, one of whom is holding a bottle of spirits
He throws the bottle in your direction and raises his fists at you

Is using a less than lethal weapon proportionate and appropriate to respond to this situation? Why/Why not?



What does Proportionality under the Charter mean?



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Justice and Regulation
state Government

- Nature of the right
- **Purpose of the limitation**
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Nature of the
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Purpose of the Limitation – Scenario



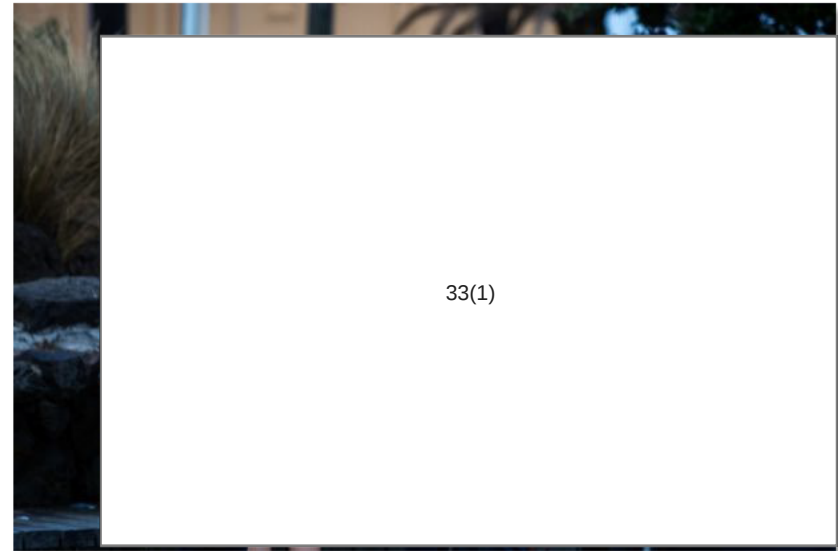
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You are patrolling the beach as part of 'Operation Beachfront Safe' in response to a reported spike in low level offending with increased summer crowds on the beach.

Your supervisor briefs you and your colleagues that the purpose of the operation is to ensure safety and good order for all members of the public.

As you begin your patrols you overhear a senior constable say 'we just have to focus on Africans – they bring all of the problems and they steal all of the cars'

You disagree with targeting only people of African appearance, so you decide to question and search all young people you come across on the beach



What rights are relevant to this approach?

What is the purpose of the operation?

Is the decision of the senior constable to target Africans justified?

Is your decision to target all young people justified?



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State Government

What does Proportionality under the Charter mean?

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Extent of the Limitation – Scenario

You are responding to a protest in the Melbourne CBD involving approximately 2000 people.

Some protestors are smashing windows and cars around Spring Street.

The ORU Tactical Commander has authorised the use of Specialist Crowd Control Equipment (SCCE) including Sponge Baton Round and Live X (PAVA) rounds to disperse the protestors.

You and your team begin deploying SCCE to disperse the protestors, and follow a group of people running down Little Collins St, who turn into a dead end laneway. Your colleague continues using SCCE on the protestors in the laneway



What rights are relevant?

What considerations are relevant in deciding to use force in this situation?



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Evidence Base - Scenario

ORU is deployed to maintain public safety in response to a protest in the park next to a hall hosting a controversial political figure giving a speech in a community hall. The organisers of the speech have paid for the police presence to maintain security.

The organiser asks you to 'move on' the protest in the park as it is disrupting the acoustics in the hall: "I've paid you guys a lot of money to be here – and these ratbags are too close. Deploy some gas to get them further away! Move them back or I'll be on the phone to the Chief Commissioner on Monday."



What rights are relevant in this situation?

What evidence would you need to decide how to respond to this task?



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What does Proportionality under the Charter mean?

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Less Restrictive - Scenario

ORU is deployed to respond to a unplanned protest outside parliament. The protest group (40 people) are well known to police. Three protestors in the centre of the crowd begin spray painting on the footpath – they are surrounded by a ring of other protestors who are loudly chanting. You know the names of two of the offenders spray painting the footpath and believe there is sufficient CCTV coverage to be able to identify the third offender at a later time. You are in a team with five other ORU members. You believe there would be significant risk of injury to ORU members if you attempted to break through the cordon around the offenders to arrest them.

What rights are relevant in this situation?

What are your options to respond to this situation?

Would you deploy LTLW? Why/Why not?



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What can PCD do for you?

- Advice & support
- Community liaison
- Materials & resources
- Professional learning opportunities

The screenshot displays the Victoria Police Learning Hub interface. At the top, the Victoria Police logo and name are visible. Below the navigation bar, the user is logged in as 'Summer Merrie'. The main content area is titled 'Cultural Community & Diversity (CCD) Resource Hub'. It features four primary navigation buttons: 'Practical Tools', 'Enhance Your Practice', 'Organisational Support', and 'Forums'. Below these, a 'Community' section is highlighted, containing eight icons representing different groups: Aboriginal, LGBTI, Seniors, Mental Health, Human Rights, Multicultural, Young People, and Disability.

Thank you



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